

D99A11
Office of Administrative Hearings

Operating Budget Data

(\$ in Thousands)

	<u>FY 17</u> <u>Actual</u>	<u>FY 18</u> <u>Working</u>	<u>FY 19</u> <u>Allowance</u>	<u>FY 18-19</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
Special Fund	\$8	\$52	\$53	\$1	1.2%
Adjustments	0	0	0	0	
Adjusted Special Fund	\$8	\$52	\$53	\$1	1.2%
Reimbursable Fund	15,312	15,447	15,356	-91	-0.6%
Adjustments	0	0	109	109	
Adjusted Reimbursable Fund	\$15,312	\$15,447	\$15,465	\$18	0.1%
Adjusted Grand Total	\$15,320	\$15,499	\$15,517	\$19	0.1%

Note: FY 18 Working includes targeted reversions, deficiencies, and across-the-board reductions. FY 19 Allowance includes contingent reductions and cost-of-living adjustments.

- The fiscal 2019 allowance for the Office of Administrative Hearings (OAH) is \$15.5 million, an increase of \$18,546, or 0.1%. This increase is attributable to the 2.0% cost-of-living adjustment for State employees.

Note: Numbers may not sum to total due to rounding.

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Personnel Data

	<u>FY 17</u> <u>Actual</u>	<u>FY 18</u> <u>Working</u>	<u>FY 19</u> <u>Allowance</u>	<u>FY 18-19</u> <u>Change</u>
Regular Positions	118.00	118.00	118.00	0.00
Contractual FTEs	<u>0.00</u>	<u>0.50</u>	<u>0.50</u>	<u>0.00</u>
Total Personnel	118.00	118.50	118.50	0.00

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	3.53	2.99%
Positions and Percentage Vacant as of 12/31/17	7.00	5.93%

- The fiscal 2019 allowance includes 118.0 regular positions and 0.5 full-time equivalents, the same as the fiscal 2018 working appropriation.
- The budgeted turnover rate is 2.99%, which requires 3.53 vacancies. As of December 31, 2017, the agency reported 7.0 vacancies, for a rate of 5.93%.

Analysis in Brief

Major Trends

Total Cases Decline for Fourth Consecutive Year: In fiscal 2017, OAH disposed of 5.3% fewer cases than in fiscal 2016. Since fiscal 2014, the agency caseload has declined 20.6%. There were declines for most types of cases heard by OAH, but the declines are particularly notable for the Motor Vehicle Administration and foreclosure mediations.

Time to Complete Cases Increases Slightly: There was a small uptick in the average time to disposition for all cases in fiscal 2017, from 45.9 to 47.1 days. This change is likely due, in large part, to recent statutory changes.

Satisfaction Ratings Drop Slightly but Remain Strong: The percentage of participants who rated OAH proceedings as satisfactory or excellent was down slightly in fiscal 2017. Despite the decline, 90% of respondents still provided positive reports.

Issues

Declining Workloads Justify Careful Look at Agency Staffing: OAH heard 26,000 fewer cases in fiscal 2017 than it did in fiscal 2005, and the annual caseload per administrative law judge (ALJ) fell by 432 cases, a decline of more than a third. It appears that declining caseloads, especially in the last five years, can be attributed to permanent changes to State and federal law and are unlikely to reverse. OAH already tracks workloads for ALJs based on case hours, and the agency's metrics appear to show a need for five fewer ALJs than are currently on staff. **The Department of Legislative Services (DLS) recommends that OAH comment on how recent changes in its caseload have impacted agency operations. DLS also recommends that the committees adopt narrative requesting a report on agency staffing and how many ALJs it believes are necessary to manage its current workload based on the agency's metrics.**

Operating Budget Recommended Actions

1. Adopt narrative requesting a report on appropriate agency staffing levels.

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D99A11
Office of Administrative Hearings

Operating Budget Analysis

Program Description

The Office of Administrative Hearings (OAH) holds hearings in contested cases involving State agencies. The office was created in 1989 to centralize the hearing functions in various units of State government. Most cases originate from the Motor Vehicle Administration (MVA); the Maryland Department of Health (MDH); the Department of Human Services (DHS); the Department of Housing and Community Development; and the Maryland State Department of Education. Funding primarily comes from those agencies that use OAH services. These agencies reimburse OAH based on the proportion of time spent on their cases.

Pursuant to Chapter 485 of 2010, homeowners who are subject to foreclosure may request mediation with an administrative law judge (ALJ). A portion of revenues paid to the Housing Counseling and Foreclosure Mediation Fund are used by OAH for the costs of conducting foreclosure mediations.

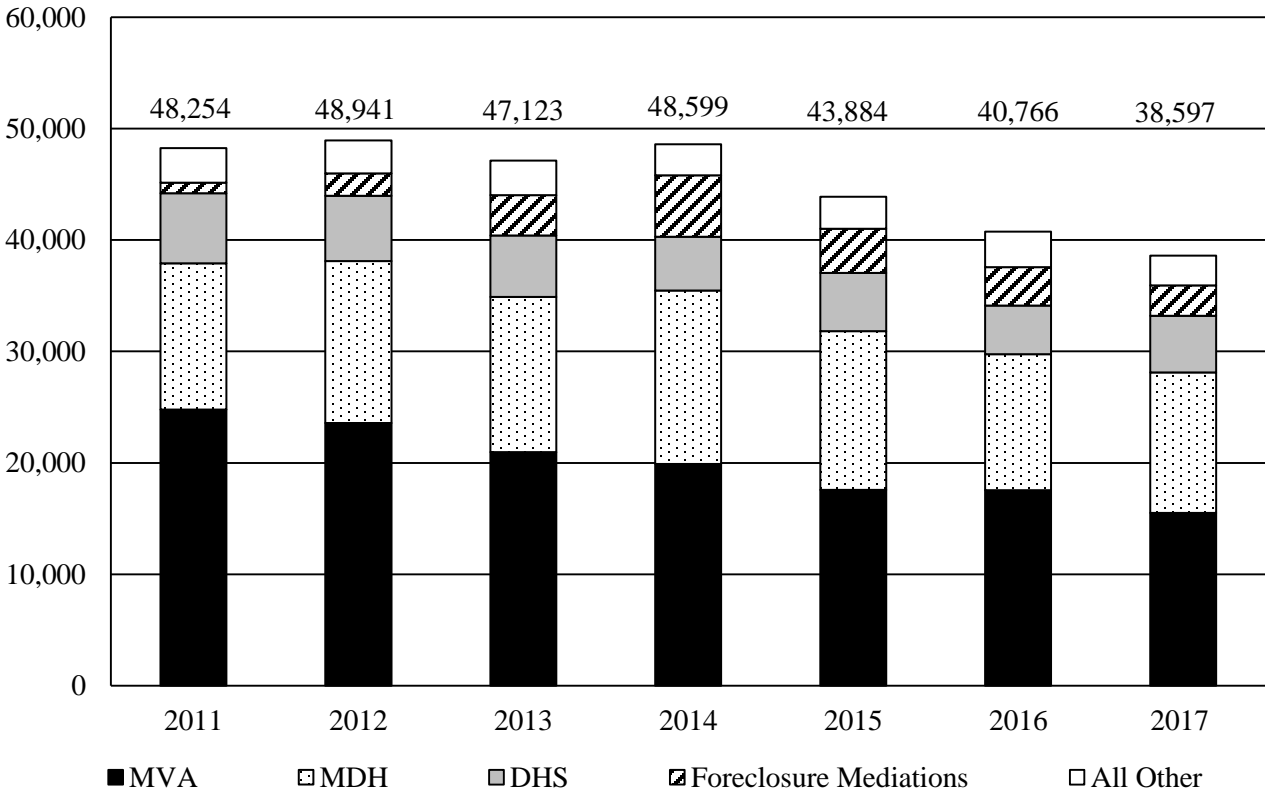
OAH decisions may be appealed to the circuit court. In certain cases, the OAH decision is advisory, and the originating agency may overrule or reject the OAH ruling. When an agency has rejected the OAH decision, recourse is also to the circuit court.

Performance Analysis: Managing for Results

1. Total Cases Decline for Fourth Consecutive Year

In fiscal 2017, OAH disposed of 38,597 foreclosure mediations and cases for State agencies. This is a decrease of 2,169 cases, or 5.3%, below fiscal 2016. Since reaching a recent highpoint in fiscal 2014, OAH's total caseload has fallen 10,002 cases, or 20.6%. **Exhibit 1** breaks down agency caseloads since fiscal 2011 in more detail. The decrease is attributable to decreases for the agency's largest dockets. In fiscal 2017, while there were increases in the number of MDH and DHS cases, they were more than offset by large declines in foreclosure mediations and MVA cases. Long-term caseload trends for the agency are discussed in greater detail in the Issues section of this analysis.

**Exhibit 1
Case Count by Referring Agency
Fiscal 2011-2017**



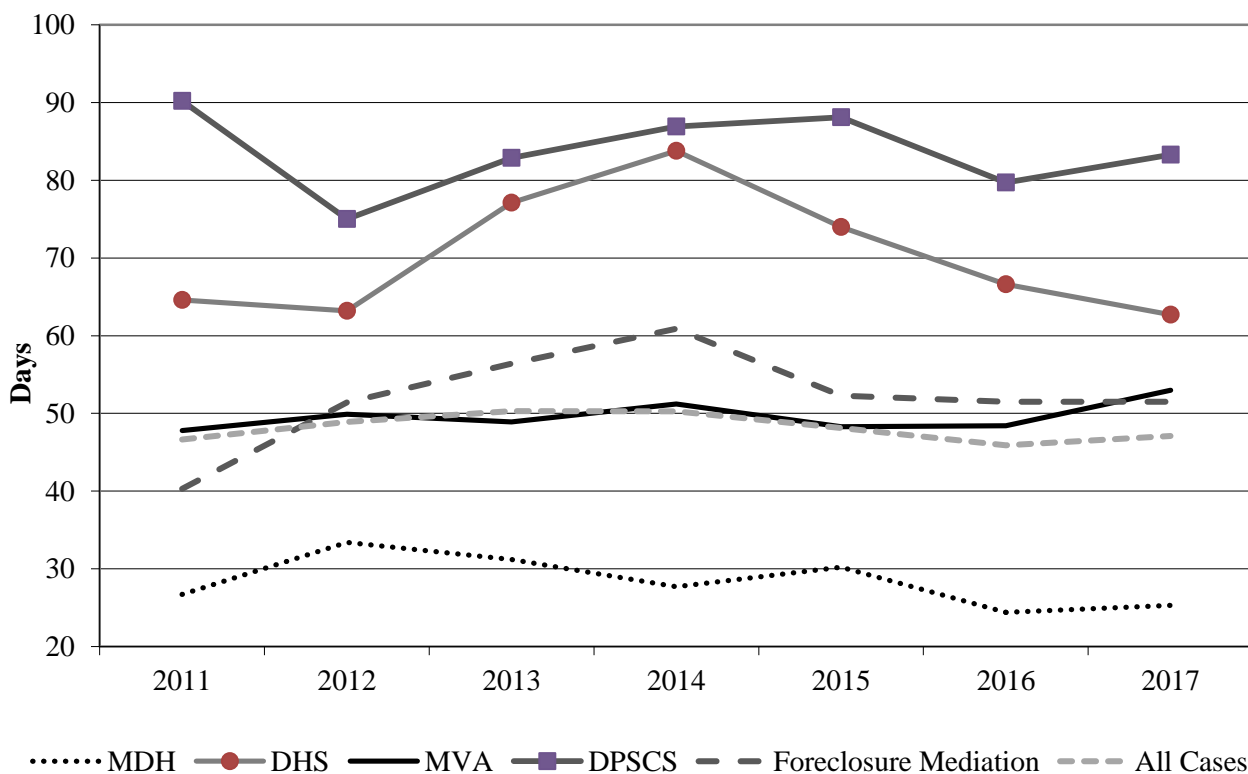
DHS: Department of Human Services
 MDH: Maryland Department of Health
 MVA: Motor Vehicle Administration

Source: Department of Budget and Management

2. Time to Complete Cases Increases Slightly

Performance goals for OAH center on efficiency and quality. Time to dispose of cases from filing is the standard measurement for efficiency. In fiscal 2017, OAH lost some ground on the time to disposition across most dockets. Overall, average time to disposition rose from 45.9 to 47.1 days but still outperformed years prior to fiscal 2016. **Exhibit 2** provides a more detailed breakdown of the disposition time for major classes of cases. Of particular note, time to disposition for MVA cases increased from 48.4 to 53.0 days, likely due to changes in the composition of that caseload, but DHS disposition times fell for the third year in a row to 62.7 days.

Exhibit 2
Average Number of Days Between Receipt and Disposition of Selected Cases
Fiscal 2011-2017



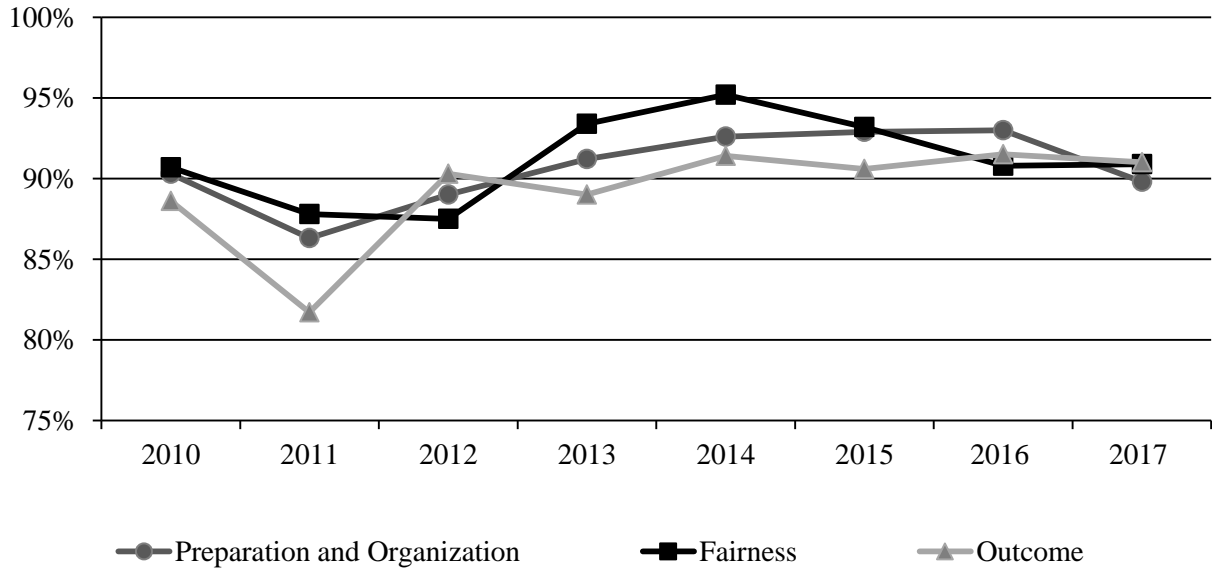
DHS: Department of Human Services
 DPSCS: Department of Public Safety and Correctional Services
 MDH: Maryland Department of Health
 MVA: Motor Vehicle Administration

Source: Department of Budget and Management

3. Satisfaction Ratings Drop Slightly but Remain Strong

Quality is measured through the use of hearing participant surveys that quantify satisfaction with elements such as preparation, organization, and fairness of the proceedings. Participants are also surveyed on satisfaction with the outcome of the proceeding. As shown in **Exhibit 3**, the percentage of participants who rated these elements as satisfactory or excellent held steady for the fairness and outcome of proceedings and remained above 90%, while ratings for preparation and organization fell to just under 90% satisfactory or excellent, a 2.8 percentage point decline.

Exhibit 3
Participants Rating Hearing Elements as Satisfactory or Excellent
Fiscal 2010-2017



Source: Department of Budget and Management

Proposed Budget

As shown in **Exhibit 4**, the fiscal 2019 allowance for OAH is \$15.5 million, an increase of \$18,546, or 0.1%, above the fiscal 2018 working appropriation. This increase is attributable to the 2.0% cost-of-living adjustment (COLA) proposed by the Governor.

Exhibit 4
Proposed Budget
Office of Administrative Hearings
(\$ in Thousands)

How Much It Grows:	Special Fund	Reimb. Fund	Total
Fiscal 2017 Actual	\$8	\$15,312	\$15,320
Fiscal 2018 Working Appropriation	52	15,447	15,499
Fiscal 2019 Allowance	<u>53</u>	<u>15,465</u>	<u>15,517</u>
Fiscal 2018-2019 Amount Change	\$1	\$18	\$19
Fiscal 2018-2019 Percent Change	1.2%	0.1%	0.1%

Where It Goes:

Personnel Expenses

Cost-of-living adjustment	\$109
Reclassifications	13
Workers' compensation premium assessment	-25
Compensation	-27
Employer pension contributions	-47
Other fringe benefit adjustments.....	2

Other Changes

Rent.....	54
Utilities.....	17
Security contract	15
Tuition reimbursements	4
Case management system upgrades.....	-3
Statewide service charges	-8
Supplies.....	-10
Communications	-10
Court reporter contract.....	-22
Technical adjustment for contractual health insurance.....	-44

Total **\$19**

Note: Numbers may not sum to total due to rounding.

General Salary Increase

The fiscal 2019 allowance includes funds for a 2.0% general salary increase for all State employees, effective January 1, 2019. These funds are budgeted in the Department of Budget and Management's (DBM) statewide program for most agencies and will be distributed to agencies during the fiscal year. This agency's share of the general salary increase is \$108,704. In addition, employees will receive another 0.5% increase and a \$500 bonus effective April 1, 2019, if actual fiscal 2018 general fund revenues exceed the December 2017 estimate by \$75 million. These funds have not been budgeted. The Administration will need to process a deficiency appropriation if revenues are \$75 million more than projected.

Personnel

Personnel expenditures, excluding the impact of the COLA discussed previously, decrease by \$84,068. This change includes decreases for pensions (\$46,967), salaries and wages (\$26,943), and workers' compensation premiums (\$24,556).

Other Changes

Other notable changes include increases for rent at OAH's Hunt Valley headquarters (\$53,973) and security (\$15,000), as well as a decrease of \$22,256 for court reporters that reflects the impact of a lower cost contract.

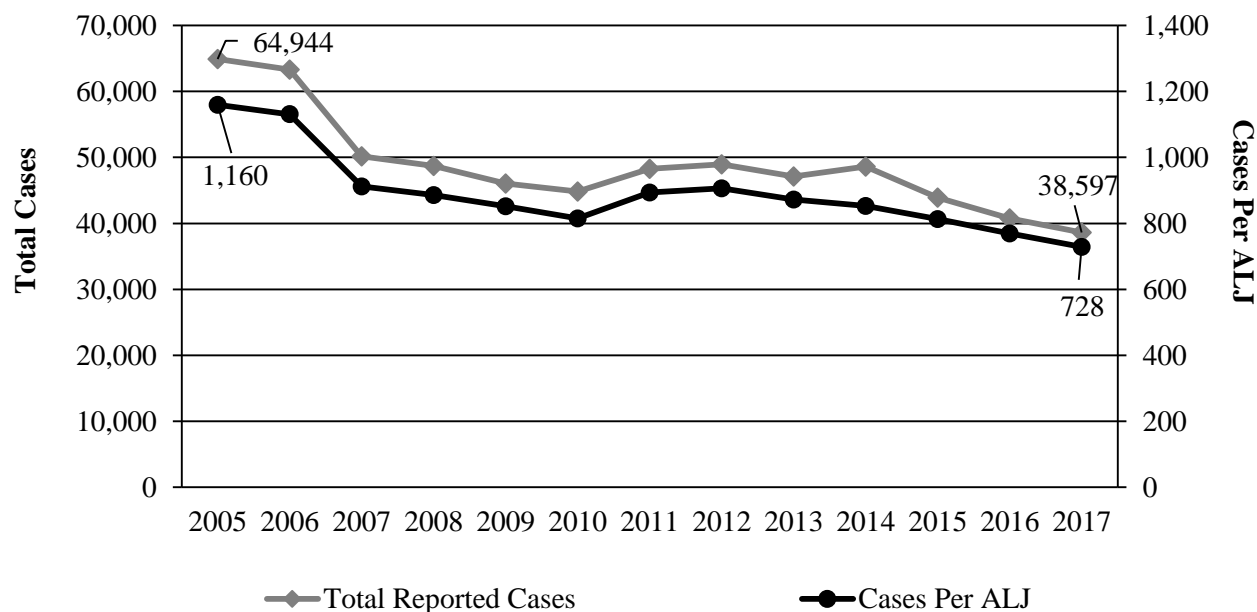
Issues

1. Declining Workloads Justify Careful Look at Agency Staffing

As noted in the Performance Analysis section, the caseload of OAH has declined substantially since fiscal 2013. It appears that this decline is largely built on systematic changes to OAH’s caseload and is likely to continue going forward. Therefore, it is appropriate to consider whether the agency’s staffing level matches its workload. The Department of Legislative Services (DLS) has reported extensively on staff shortages in the Executive Branch over the last two years and found OAH to be the unusual agency for which fewer staff may be appropriate.

Looking over an even longer period, as illustrated in **Exhibit 5**, OAH’s total caseload has fallen by over 26,000 cases since fiscal 2005, a decline of 41%. Over that same period, the agency’s staffing has declined as well but significantly less than the decline in cases. As a result, in fiscal 2017, the average ALJ’s workload was 432 cases lower than fiscal 2005, a decline of more than a third.

Exhibit 5
Cases Per Administrative Law Judge
Fiscal 2005-2017



ALJ: administrative law judge

Source: Department of Budget and Management; Office of Administrative Hearings

The medium-term trend is similar to this long-term trend. From fiscal 2013 to 2017, OAH caseload has shrunk by over 8,500 cases, a decline of 18.0%. However, in the current allowance, OAH has only 2 fewer ALJs than it did in fiscal 2013. The figures are similar for total agency staffing. Including contractual workers, there are only 5.5 fewer total employees in the fiscal 2019 allowance than there were in fiscal 2013, a decline of 4.4%.

Why Caseloads Are Declining

Caseloads fluctuate, and it would be short-sighted to adjust agency staffing without understanding the drivers of these changes. In order to determine the best response to the recent decline in OAH workload, it is important to know what types of cases are declining and why they are declining. To the extent that this decline appears to be based on ordinary variance or temporary shifts in the number and the types of cases that the agency receives, it would be imprudent to make reductions that would undermine agency operations if case counts moved higher. However, to the extent that the changes can be tied to new policies or other changes that are likely to be permanent, it should be possible to adjust staffing without harming operations.

Exhibit 6 breaks out the largest contributors to the OAH caseload and shows how they have changed over time. OAH handles dozens of types of cases for numerous State agencies, but the vast majority come from the four sources identified in Exhibit 6. As shown in the exhibit, declines in cases from MVA and MDH as well as fewer foreclosure mediations are driving the overall decline. There are good reasons to believe that there has been a longer term change in each of these caseloads.

Exhibit 6
Case Count by Type
Fiscal 2013-2017

<u>Case Type</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2013-2017</u> <u>Change</u>	<u>2013-2017</u> <u>% Change</u>
Maryland Department of Health	13,928	15,570	14,249	12,208	12,609	-1,319	-9%
Department of Human Services	5,516	4,810	5,227	4,383	5,096	-420	-8%
Motor Vehicle Administration	20,958	19,907	17,574	17,535	15,509	-5,449	-26%
Foreclosure Mediations	3,627	5,514	3,950	3,448	2,717	-910	-25%
All Other	3,094	2,798	2,884	3,192	2,666	-428	-14%
Total	47,123	48,599	43,884	40,766	38,597	-8,526	-18%

Source: Department of Budget and Management; Office of Administrative Hearings

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- **MVA:** The largest change is a decline of almost 5,500 MVA cases since fiscal 2013. According to OAH, this decline is largely attributable to the increased utilization of ignition interlock devices in driving under the influence (DUI) adjudications. Recent changes in the State’s DUI laws, including Noah’s Law, has greatly expanded the use of ignition interlock as a compliance condition in DUI cases. Previous legislative action had already reduced the number of license suspension and revocation cases heard by OAH and Noah’s law, which makes ignition interlock devices mandatory in most DUI cases, has led to a further decline in the last year. While OAH has also reported that the decline in cases associated with Noah’s Law may be offset by an increase in the number of proceedings for violations of the ignition interlock program’s conditions, it does appear that over the last five years, ignition interlock has reduced the number of MVA cases referred to OAH.
- **MDH:** The number of MDH cases has declined by over 1,300 since fiscal 2013. Changes in this caseload are driven largely by the number of individuals who apply for Medicaid, are deemed ineligible, and challenge that determination. While this implies that this caseload will fluctuate over time, it is likely that Medicaid expansion under the Affordable Care Act has permanently reduced the number of OAH proceedings. Expanded eligibility had led to a smaller percentage of applicants being denied benefits, which reduces the number of cases brought before OAH relative to the total number of applicants. Finally, while there is substantial uncertainty surrounding certain aspects of federal health care law, it does not appear that a rollback of Medicaid expansion is likely.
- **Foreclosure Mediations:** The 2008 recession was a unique event in American history with an unprecedented number of residential foreclosures. One of the State’s responses to better protect homeowners was the addition of an OAH mediation to the foreclosure process in Maryland. When these mediation proceedings began in fiscal 2011, there were still a large number of ongoing foreclosures stemming from the financial crisis. As the number of foreclosures returns to a more typical level, it is likely that the number of mediations will also stabilize well below its peak in fiscal 2014 and 2015.

It is also important to keep in mind that the overall reduction in caseloads has occurred despite the introduction of new types of proceedings, including cases related to the Maryland Health Benefit Exchange and the foreclosure mediations discussed previously, which have added thousands of cases per year to the agency caseload. The impact of those changes is important but has already been factored into this analysis. Similarly, any decision on staffing should take into account the impact of the Payroll Recovery Act (Chapter 783 of 2017), which created an estimated need for 1 additional ALJ and 1 clerk through 2019 to process grievances filed by State employees. At the time that the legislation was under consideration, DBM reported that 200 such grievances had already been filed. DBM reports that new grievances are still being filed, and the total number of such claims is not yet known.

Impact on Staff Workloads

In addition to tracking workload by raw case count, OAH also tracks workload by the number of case hours agencywide each year. These case-hour calculations are based on an analysis of the average amount of time an ALJ spends on each type of case. OAH uses these calculations to determine each agency's share of the cost of operating the agency. In the most recent year for which these more detailed calculations are available (fiscal 2016), ALJs had a total of 77,994 case hours (1,471 hours per ALJ), a decline of 8,898 total case hours, or 10.2%. That change indicates a need for 5 fewer ALJs than are currently on staff.

By all accounts, OAH is well managed and generally forward thinking in its provision of services. The agency devotes considerable attention to training and quality control for its ALJs and consistently receives strong marks on its proceedings. However, it is also the case that the agency has largely avoided the staffing reductions that have squeezed other agencies over the last decade. This alone is not a reason to recommend decreasing the agency's staff, but it does mean that OAH is better staffed than most other agencies.

OAH's performance is strong today; it was strong five years ago with the same staff complement and 8,500 more cases, and there is every reason to believe that it would remain strong with a staff count that better matches the agency's workload and productivity.

Given the budget constraints currently facing the State and the likelihood of accelerating pressure on the General Fund in the coming years, it is particularly important to prioritize spending and achieve savings wherever they are reasonably available. While the case statistics indicate that a staffing reduction of as much as 18% is justifiable, even a more moderate reduction would still achieve substantial savings for the State and hedge against future caseload increases. The elimination of 5 ALJ positions, for instance, would reduce expenditures by approximately \$700,000; and the elimination of 5 other positions elsewhere in the agency would bring the savings close to \$1 million per year.

DLS recommends that OAH comment on how recent changes in its caseload have impacted agency operations. DLS also recommends that the committees adopt narrative requesting a report on agency staffing and how many ALJs it believes are necessary to manage its current workload based on the agency's metrics.

Operating Budget Recommended Actions

1. Adopt the following narrative:

Recent Caseloads and Appropriate Agency Staffing: The committees are concerned about the recent caseload declines for the Office of Administrative Hearings (OAH) and the impact of these declines on workloads for administrative law judges and other staff. The committees request a report on the reasons for the decline in agency caseloads and an analysis of current staffing needs based on agency workload metrics.

Information Request	Author	Due Date
Recent caseloads and appropriate agency staffing	OAH	November 1, 2018

Appendix 1
Current and Prior Year Budgets
Office of Administrative Hearings
(\$ in Thousands)

	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Fund</u>	<u>Federal</u> <u>Fund</u>	<u>Reimb.</u> <u>Fund</u>	<u>Total</u>
Fiscal 2017					
Legislative					
Appropriation	\$0	\$44	\$0	\$15,231	\$15,275
Deficiency					
Appropriation	0	0	0	0	0
Cost					
Containment	0	0	0	0	0
Budget					
Amendments	0	8	0	82	90
Reversions and					
Cancellations	0	-44	0	0	-44
Actual					
Expenditures	\$0	\$8	\$0	\$15,312	\$15,320
Fiscal 2018					
Legislative					
Appropriation	\$0	\$52	\$0	\$15,447	\$15,499
Cost					
Containment	0	0	0	0	0
Budget					
Amendments	0	0	0	0	0
Working					
Appropriation	\$0	\$52	\$0	\$15,447	\$15,499

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. Numbers may not sum to total due to rounding.

Fiscal 2017

The Office of Administrative Hearings finished fiscal 2017 \$45,759 above its legislative appropriation. The reimbursable fund appropriation was increased by \$82,159 due to a budget amendment to fund employee increments that was partially offset by the cancellation of \$300 in unspent funds. Special fund expenditures were \$36,100 below the legislative appropriation due to the cancellation of \$43,854 in unspent funds offset by a budget amendment adding \$7,754 for employee increments.

Fiscal 2018

To date, there have been no actions adjusting the fiscal 2018 legislative appropriation.

**Appendix 2
Object/Fund Difference Report
Office of Administrative Hearings**

<u>Object/Fund</u>	<u>FY 17 Actual</u>	<u>FY 18 Working Appropriation</u>	<u>FY 19 Allowance</u>	<u>FY 18 - FY 19 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	118.00	118.00	118.00	0.00	0%
02 Contractual	0.00	0.50	0.50	0.00	0%
Total Positions	118.00	118.50	118.50	0.00	0%
Objects					
01 Salaries and Wages	\$ 12,927,048	\$ 13,030,784	\$ 12,946,716	-\$ 84,068	-0.6%
02 Technical and Spec. Fees	19,435	58,865	19,481	-39,384	-66.9%
03 Communication	220,381	171,612	161,721	-9,891	-5.8%
04 Travel	168,370	175,000	175,000	0	0%
06 Fuel and Utilities	122,034	105,119	122,034	16,915	16.1%
07 Motor Vehicles	2,998	11,134	11,134	0	0%
08 Contractual Services	676,415	700,341	682,428	-17,913	-2.6%
09 Supplies and Materials	147,210	165,000	155,210	-9,790	-5.9%
10 Equipment – Replacement	2,649	42,068	42,068	0	0%
11 Equipment – Additional	11,608	40,000	40,000	0	0%
13 Fixed Charges	1,022,231	998,881	1,052,854	53,973	5.4%
Total Objects	\$ 15,320,379	\$ 15,498,804	\$ 15,408,646	-\$ 90,158	-0.6%
Funds					
03 Special Fund	\$ 7,900	\$ 52,000	\$ 52,636	\$ 636	1.2%
09 Reimbursable Fund	15,312,479	15,446,804	15,356,010	-90,794	-0.6%
Total Funds	\$ 15,320,379	\$ 15,498,804	\$ 15,408,646	-\$ 90,158	-0.6%

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. The fiscal 2019 allowance does not include contingent reductions or cost-of-living adjustments.